Code of Procedure

for appeals under the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*

Information and Privacy Commissioner/Ontario

Ann Cavoukian, Ph.D.
Commissioner
December 2001

Information and Privacy
Commissioner/Ontario

80 Bloor Street West
Suite 1700
Toronto, Ontario
M5S 2V1

416-326-3333
1-800-387-0073
Fax: 416-325-9195
TTY (Teletypewriter): 416-325-7539

Cette publication, intitulée «Code de procédure», est également disponible en français.

102-03323/

Contents

Part I — Introduction 1

1. Application 1
2. Purpose and Interpretation 1
3. Definitions 1

Part II — The Appeal Process 4

4. Initiating an Appeal 4
5. Intake Stage 5
6. Mediation Stage 5
7. Adjudication Stage 6

Part III — Special Types of Appeals 8

8. Straightforward Appeals 8
9. Reasonable Search Appeals 8

Part IV — General 10

10. Providing Records to the IPC 10
11. New Discretionary Exemption Claims 10
12. Constitutional Questions 10
13. Other Individuals or Organizations 11
14. Particulars of Allegations 11
15. Additional Information in an Inquiry 11
16. Confirmation of Settlements and Notice of Orders 12
17. Stays 12
18. Reconsideration 12
19. "On Hold" and Abandoned Appeals 13
20. Requests to Vary the Process 14
21. Time 14

Practice Directions 15

Number 1 — Providing records to the IPC during an appeal

Number 2 — Representations: general guidelines

Number 3 — Guidelines for individuals whose personal information is at issue in an appeal

Number 4 — Guidelines for parties whose commercial or business information is at issue in an appeal

Number 5 — Guidelines for institutions in making representations

Number 6 — Affidavit and other evidence

Number 7 — Sharing of representations

Number 8 — Reasonable search appeals

Number 9 — Constitutional questions

Number 10 — Appeal fees

Number 11 — Appeal form

Part I — Introduction

1. Application

1.01 This Code applies to appeals under the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*.

2. Purpose and Interpretation

2.01 This Code is to be broadly interpreted in the public interest in order to secure the most just, expeditious and least expensive determination on the merits of every appeal.

2.02 Where specific procedures are not set out in this Code, the IPC may do whatever is permitted by law to enable it to effectively and completely mediate or adjudicate the appeal and to ensure compliance with the provisions of any order.

2.03 A failure to follow any procedure in this Code does not for that reason alone render an appeal, or any step in an appeal, invalid.

2.04 The IPC may in its discretion depart from any procedure in this Code where it is just and appropriate to do so.

2.05 The IPC may exercise any of its powers and perform any of its duties on its own initiative or at the request of a party.

2.06 The IPC may issue practice directions and rulings relating generally to appeals, at any time, including before or during any appeal.

3. Definitions

3.01 In this Code, the following definitions apply:

Act	The *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act*, whichever applies.
Adequacy of Decision Appeal	An appeal in which the sole issue is whether the institution's written decision complies with the requirements of the *Act*.
Adjudication Stage	The third of three main stages of the appeal process in which an Adjudicator conducts an inquiry.

Adjudicator	The Commissioner, the Assistant Commissioner or any other person employed by the IPC to whom the Commissioner has delegated the power to conduct an inquiry.
Affected Person	An individual or organization whose interests may be affected by an appeal.
Appeal	A request that the IPC review a decision of an institution concerning a request under the *Act*.
Appellant	A person who appeals a decision of an institution concerning a request under the *Act*.
Deemed Refusal Appeal	An appeal in which the sole issue is whether the institution has responded to a request within the time frame required by the *Act*.
Failure to Disclose Records Appeal	An appeal in which the sole issue is whether the institution has failed to disclose records in accordance with its decision to grant access.
Inquiry	A process in which the IPC inquires into the issues in an appeal and disposes of some or all of the issues by making an order.
Institution	An organization subject to the *Act*.
Intake Analyst	A person employed by the IPC who gathers preliminary information and screens appeals.
Intake Stage	The first of three main stages of the appeal process in which the IPC screens an appeal and either dismisses it or streams it to a later stage of the process.
IPC	The office of the Information and Privacy Commissioner/Ontario.
Mediation Stage	The second of three main stages of the appeal process in which a Mediator investigates the circumstances of an appeal and attempts to effect a settlement of the issues.
Mediator	A person employed by the IPC who conducts mediation.
Notice of Inquiry	A document prepared by the IPC setting out the issues in an appeal and inviting representations on those issues.

Order	A decision of an Adjudicator disposing of some or all of the issues in an appeal.
Party	An individual or organization with a direct interest in an appeal, including the appellant, the institution and any affected person notified by the IPC.
Reasonable Search Appeal	An appeal in which the sole issue is whether the institution has conducted a reasonable search for records responsive to the request.
Registrar	A person employed by the IPC who receives, screens and streams appeals.
Report of Mediator	A document prepared by a Mediator outlining background information and any issues in the appeal which are settled or outstanding.
Representations	The documents, other evidence and/or arguments a party provides to an Adjudicator in an inquiry.
Request	The letter or form sent to an institution by a person seeking access to a record or correction of personal information under the *Act*.
Screening	A process in which the IPC reviews an appeal and decides whether to dismiss it or stream it to a later stage of the process.
Straightforward Appeal	A Deemed Refusal, Failure to Disclose Records, Time Extension, Transfer or Adequacy of Decision Appeal.
Streaming	A process for an appeal not dismissed at the Intake stage in which the IPC decides the next stage of the process to which the appeal should be advanced.
Time Extension Appeal	An appeal in which the sole issue is an institution's decision to extend the time for responding to a request beyond the usual time frame required by the *Act*.
Transfer Appeal	An appeal in which the sole issue is an institution's decision to transfer or forward the request to another institution.

Part II — The Appeal Process

4. Initiating an Appeal

General

4.01 A person who has made a request under the *Act* may appeal any decision of the institution concerning the request.

4.02 An affected person who is notified by an institution of a request under the *Act* may appeal any decision of the institution concerning the request.

4.03 Where a person has made a request, and the institution does not give the person notice of its decision within the time frame required by the *Act*, the institution is deemed to have refused the request, and the person may appeal the deemed refusal.

Notice of appeal

4.04 A person who wishes to appeal shall send written notice to the Registrar, by way of a completed Appeal Form (see *Practice Direction* number 11) or in any other written form, within 30 days after the institution has given notice of its decision. The notice of appeal should include:

(a) the appellant's name, address and telephone number to assist the IPC in making contact;

(b) the institution's name and the file number assigned by the institution to the request;

(c) a copy of the institution's decision;

(d) a copy of the request; and

(e) a brief explanation of the basis for the appeal.

Appeal fee

4.05 An appellant shall pay the applicable appeal fee as set by regulation (see *Practice Direction* number 10).

4.06 An appellant is not required to pay an additional appeal fee for any subsequent appeal from a decision of an institution concerning the same request.

Counsel or agent

4.07 Counsel or an agent may appeal on behalf of an appellant. If the request is for access to or correction of the appellant's personal information, the IPC may require the appellant to complete a form authorizing counsel or the agent to act as such for the purpose of the appeal.

5. Intake Stage

Screening

5.01 The IPC screens all appeals received. The IPC may dismiss an appeal which is not within its jurisdiction or which, in its view, does not warrant further action.

5.02 Before deciding whether to dismiss an appeal at this stage, the IPC may invite submissions from the appellant.

5.03 The IPC will give the appellant and the institution written notice of any decision to dismiss an appeal at this stage.

5.04 Where an appeal is dismissed at the Intake stage, the IPC may refund to the appellant any appeal fee paid.

Streaming

5.05 Where an appeal is not dismissed during screening at the Intake stage, the IPC will either dispose of the issues in the appeal at the Intake stage, or stream it to the Mediation stage or the Adjudication stage.

Notice

5.06 Where an appeal is not dismissed at the Intake stage, the IPC will notify the institution of the appeal. Affected persons may be notified when their interests are identified.

6. Mediation Stage

Streaming

6.01 An appeal streamed to the Mediation stage may be further streamed as follows:

(a) A Deemed Refusal, Failure to Disclose Records, Time Extension, Transfer or Adequacy of Decision Appeal may be streamed to the process for Straightforward Appeals; and

(b) A Reasonable Search Appeal may be streamed to the process for that type of appeal.

6.02 An appeal not further streamed will proceed directly to mediation.

Mediation

6.03 At mediation, a Mediator may contact the parties, investigate the circumstances of the appeal, and attempt to:

(a) effect a settlement of all of the issues in the appeal; or

(b) if all of the issues in the appeal cannot be settled, narrow the issues that proceed to the Adjudication stage.

Report of Mediator

6.04 At the end of mediation, the Mediator will prepare a Report of Mediator and send a copy to the parties.

6.05 If a party believes that the Report of Mediator contains an error or omission, the party may ask the Mediator to amend the report. Such a request shall be made in writing within 10 days after the report is sent. The Mediator may amend the report on the request of a party or on his or her own initiative. Where the report is not amended, the Mediator will advise the relevant party, in writing, of his or her decision regarding the request. Where the report is amended, the Mediator will send a copy of the amended report to the parties.

Appeal settled

6.06 Where an appeal is settled in the Mediation stage, the Mediator will close the appeal.

Appeal not settled

6.07 Where an appeal is not settled in the Mediation stage, the IPC will stream it to the Adjudication stage. In that event, the Report of Mediator will be provided to the Adjudicator.

7. Adjudication Stage

Application

7.01 This section does not apply to an appeal streamed to the process for Straightforward or Reasonable Search Appeals.

General

7.02 At the Adjudication stage, an Adjudicator may conduct an inquiry to dispose of some or all of the issues in the appeal.

Notice of Inquiry

7.03 The Adjudicator begins the inquiry by sending a Notice of Inquiry to the party bearing the initial onus (the first party), as determined by the Adjudicator, inviting representations on the issues in the appeal.

7.04 Upon receipt of the first party's representations, the Adjudicator may, if he or she considers it necessary, send either the same or a modified Notice of Inquiry to the second party, inviting representations on the issues in the appeal.

7.05 Upon receipt of the second party's representations, the Adjudicator may, if he or she considers it necessary, send a modified Notice of Inquiry to the first party, inviting further representations in reply.

7.06 In an appeal involving an affected person or persons, the Adjudicator may send a Notice of Inquiry to the affected person or persons when their interests are engaged.

Sharing of representations

7.07 The Adjudicator may provide some or all of the representations received from a party to the other party or parties in accordance with *Practice Direction* number 7.

Time for submitting representations

7.08 A party who chooses to submit representations to the IPC shall do so by the date specified in the Notice of Inquiry. A party seeking a time extension of seven days or less may make this request to the IPC in writing or by telephone. A party seeking a time extension in excess of seven days shall make this request in writing, in accordance with the procedure in section 20.

7.09 If any party does not submit representations by the date specified in the Notice of Inquiry, or such other date as may be determined by the IPC in response to a request for a time extension, the inquiry may proceed and an order may be issued in the absence of such representations.

Mediation

7.10 The IPC may undertake mediation of an appeal at any point in the Adjudication stage.

Order

7.11 Unless the appeal is settled or terminated for some other reason, the Adjudicator will make an order disposing of some or all of the issues in the appeal.

Part III — Special Types of Appeals

8. Straightforward Appeals

Application

8.01 This section applies to a Deemed Refusal, Failure to Disclose Records, Time Extension, Transfer or Adequacy of Decision Appeal that has been streamed to the process for Straightforward Appeals.

General

8.02 A Straightforward Appeal is handled by a Mediator or Intake Analyst who may attempt to effect a settlement of the issues in the appeal and, if the appeal is not settled, may conduct an inquiry and make an order disposing of the issues in the appeal.

Time Extension, Transfer, Adequacy of Decision Appeal

8.03 In a Time Extension, Transfer and Adequacy of Decision Appeal, the Mediator or Intake Analyst will notify the parties that the IPC has received the appeal. If the appeal is not settled within a period of up to 14 days after the notice is sent (as specified in the notice), the Mediator or Intake Analyst may send a Notice of Inquiry to the parties inviting representations by a specified date. The Mediator or Intake Analyst may then make an order disposing of the issues in the appeal.

Deemed Refusal, Failure to Disclose Records Appeal

8.04 In a Deemed Refusal or Failure to Disclose Records Appeal, the Mediator or Intake Analyst will send a Notice of Inquiry to the parties on receipt of the appeal. If the appeal is not settled within a period of up to 14 days after the notice is sent (as specified in the notice), the Mediator or Intake Analyst may make an order disposing of the issues in the appeal without hearing further from the parties.

Appeal settled

8.05 Where a Straightforward Appeal is settled, the Mediator or Intake Analyst will prepare a Report of Mediator and send a copy to the parties.

9. Reasonable Search Appeals

Application

9.01 This section applies to a Reasonable Search Appeal streamed to the process for this type of appeal.

General

9.02 A Reasonable Search Appeal is handled by a Mediator and an Adjudicator.

Notice of Inquiry

9.03 On receipt of the appeal, the Adjudicator will send a Notice of Inquiry to the parties indicating that the Adjudicator will conduct an oral inquiry on a date to be determined by the Adjudicator.

Mediation before the oral inquiry

9.04 The Mediator may attempt to effect a settlement of the issues in the appeal. If the appeal is not settled, the appeal may proceed to an oral inquiry.

Oral Inquiry

9.05 At the oral inquiry, the parties are invited to make representations to the Adjudicator either in person or by telephone, in the presence of the other party.

Mediation during or after the oral inquiry

9.06 The Mediator may undertake mediation of the appeal at any time during or after the oral inquiry, prior to the Adjudicator making an order.

9.07 When mediation occurs, the Adjudicator is not present.

Appeal settled

9.08 Where the appeal is settled, the Mediator will prepare a Report of Mediator and send a copy to the parties.

Order

9.09 Where the appeal is not settled, the Adjudicator may make an order disposing of the issues in the appeal.

9.10 The Adjudicator may determine issues relating to the scope of the request as they arise in the course of an inquiry into a Reasonable Search Appeal.

Part IV — General

10. Providing Records to the IPC

10.01 Where the IPC determines that copies of records are required to process an appeal, it may send a written request for the records to the institution, including the date by which the records are to be received. Where an institution fails to provide the records, or any of them, within the specified time, the IPC may issue an order requiring the institution to produce the records to the IPC, without inviting representations from any party on this issue.

10.02 Where the IPC determines that it is required in order to process an appeal, the IPC may issue an order requiring the institution to number the records, number the pages of records, provide legible copies, provide highlighted copies, or provide a detailed index indicating the date of creation of each record, a brief description of the record, the extent to which it was disclosed, and what exemption has been claimed.

11. New Discretionary Exemption Claims

35-day period

11.01 In an appeal from an access decision, excluding an appeal arising from a deemed refusal, an institution may make a new discretionary exemption claim only within 35 days after the institution is notified of the appeal. A new discretionary exemption claim made within this period shall be contained in a new written decision sent to the parties and the IPC. If the appeal proceeds to the Adjudication stage, the Adjudicator may decide not to consider a new discretionary exemption claim made after the 35-day period.

Exception

11.02 An institution does not have an additional 35-day period within which to make a new discretionary exemption claim after it makes an access decision arising from a Deemed Refusal Appeal.

12. Constitutional Questions

Raised by a party

12.01 An appellant may raise a constitutional question in an appeal only within 35 days after giving the IPC notice of the appeal. Any other party may raise a constitutional question only within 35 days after the party is notified of the appeal.

12.02 A party raising a constitutional question shall notify the IPC and the Attorneys General of Canada and Ontario of the question within the applicable 35-day time period.

Raised by the IPC

12.03 The IPC may at any time during an appeal notify a party that in its opinion the appeal raises a constitutional question. A party receiving this notice shall within the time period specified by the IPC either:

(a) notify the IPC and the Attorneys General of Canada and Ontario of the question; or

(b) provide the IPC with representations as to why the party believes notice of a constitutional question is not necessary.

12.04 Before deciding whether an appeal raises a constitutional question, the IPC may notify and invite representations from the parties.

12.05 If a party objects to providing notice of a constitutional question, the IPC may:

(a) decide that it is not necessary for the party to provide notice of a constitutional question; or

(b) require the party to provide notice of a constitutional question as directed.

13. Other Individuals or Organizations

13.01 The IPC may notify and invite representations from any individual or organization who may be able to present useful information to aid in the disposition of an appeal.

14. Particulars of Allegations

14.01 Where the good character, propriety of conduct, or competence of a party is an issue in an appeal, the party making such allegation shall provide particulars to the IPC in its representations. The portion of the party's representations containing these particulars may be shared with the other party.

15. Additional Information in an Inquiry

15.01 During an inquiry, the Adjudicator may request additional information from any party, either orally or in writing.

16. Confirmation of Settlements and Notice of Orders

16.01 The IPC will give the parties written confirmation of any settlement of an appeal and written notice of any order made under the *Act*.

17. Stays

17.01 An Adjudicator may stay any provision of an order, at any time, on the request of a party or on his or her own initiative.

17.02 Before deciding whether to stay a provision of an order, the Adjudicator may notify and invite representations from the parties.

18. Reconsideration

Grounds for reconsideration

18.01 The IPC may reconsider an order or other decision where it is established that there is:

(a) a fundamental defect in the adjudication process;

(b) some other jurisdictional defect in the decision; or

(c) a clerical error, accidental error or omission or other similar error in the decision.

18.02 The IPC will not reconsider a decision simply on the basis that new evidence is provided, whether or not that evidence was available at the time of the decision.

Initiating a reconsideration

18.03 The IPC may reconsider a decision at the request of a person who has an interest in the appeal or on the IPC's own initiative.

18.04 A reconsideration request shall be made in writing to the individual who made the decision in question. The request must be received by the IPC:

(a) where the decision specifies that an action or actions must be taken within a particular time period or periods, before the first specified date or time period has passed; or

(b) where decision does not require any action within any specified time period or periods, within 21 days after the date of the decision.

18.05 A reconsideration request should include all relevant information in support of the request, including:

(a) the relevant order and/or appeal number;

(b) the reasons why the party is making the reconsideration request;

(c) the reasons why the request fits within grounds for reconsideration listed in section 18.01;

(d) the desired outcome; and

(e) a request for a stay, if necessary.

Effect of reconsideration

18.06 A reconsideration request does not automatically stay any provision of a decision. A decision must be complied with within the specified time period unless the IPC or a court directs otherwise.

18.07 A reconsideration request does not preclude a person from seeking other legal remedies that may be available.

Adjudicator

18.08 The individual who made the decision in question will respond to the request, unless he or she for any reason is unable to do so, in which case the IPC will assign another individual to respond to the request.

Notice

18.09 Before deciding whether to reconsider a decision, the IPC may notify and invite representations from the parties.

Decision

18.10 Where the IPC decides to grant or decline a reconsideration request, the IPC will make a written decision in the form of a letter or order and send a copy to the parties.

19. "On Hold" and Abandoned Appeals

19.01 The IPC may place an appeal "on hold" for later re-activation.

19.02 Where an appellant has not responded within 21 days to attempts by the IPC to contact him or her in writing or by telephone, the IPC may decide to treat the appeal as abandoned, in which case the IPC will notify the parties in writing that the appeal is closed.

20. Requests to Vary the Process

20.01 The IPC may waive or vary any of the procedures prescribed by or under this Code, including any requirement or time period specified in any written communication from the IPC, if it is of the opinion that it would be advisable to do so in order to secure the just and expeditious determination of the issues.

20.02 A party who wishes the IPC to waive or vary any of the procedures prescribed by or under this Code shall submit a request for such variance in writing to the Adjudicator or, where no Adjudicator has been assigned, to the Registrar.

20.03 A request to vary the process should include all relevant information in support of the request, including:

(a) the relevant appeal number;

(b) the reasons why the party is making the request to vary the process;

(c) the reasons why the party will suffer prejudice if the request is not granted; and

(d) the reasons why the prejudice under paragraph (c) outweighs any prejudice to the other party or parties to the appeal.

20.04 Before deciding whether to vary the process, the IPC may notify and invite representations from the parties.

20.05 Where the IPC decides to grant or decline a request to vary the process, the IPC will make a written decision in the form of a letter or order and send a copy to the parties.

21. Time

21.01 Where this Code contains a time frame for doing an act:

(a) the days are calculated as calendar days;

(b) the days are counted by excluding the day on which the first act is done and including the day on which the second act is done; and

(c) where the time for doing an act expires on a day when the IPC's offices are closed, the act may be done on the next day that the IPC's offices are open.

Number 1
August 2000

Practice Direction

Providing records to the IPC during an appeal

Introduction

1. During an appeal, IPC staff usually require access to the records that are the subject of the appeal. Under the *Act*, the Commissioner is entitled to access to the records at issue, either by having them produced or by examining them at the institution.

2. The IPC can process appeals most effectively if the records are readily available at the IPC's offices. In most cases, records are pivotal to the entire appeal process. In appeals streamed to the Mediation stage, they are referred to frequently by the Mediator.

3. If the matter proceeds to the Adjudication stage, the Adjudicator reviews the records to determine whether they are responsive to the request, whether particular exemptions or exclusions apply, and whether the records can be severed.

Procedure

4. Where the IPC determines that it requires access to the relevant records in an appeal, the IPC will request them in writing, specifying the date by which the institution must send them to the IPC. Where asked to do so, the IPC may grant a brief extension of the time for submitting records, if the institution provides reasonable justification.

5. Where the IPC does not receive the records by the specified date, an Adjudicator may, without further notice to the parties, issue an order requiring the institution to produce the records.

Special types of records

6. If legal advice is contained in a particular record, an institution may be concerned that by providing the record to the IPC it may be waiving solicitor-client privilege. This is not the case. The *Act* provides the Commissioner with authority to obtain and examine a record, despite any legal privilege, and institutions do not waive solicitor-client privilege by sending records of this nature to the IPC. The same reasoning applies where the confidentiality provisions contained in other statutes are at issue.

On-site examination

7. In special circumstances, for example where an institution's records are highly voluminous or too fragile to survive physical transportation or photocopying, the IPC may agree to an on-site inspection of records.

Sending records

8. Institutions may send either the original record or a copy of the record to the IPC. Records are usually sent to the IPC by bonded courier.

9. A well-organized records package is essential to the quick and efficient processing of an appeal, and can reduce the overall time it takes to complete the appeal. In particular, a detailed index should be provided, showing the name of each document, its creation date, whether it was disclosed in whole or in part or entirely withheld, and what exemption has been claimed for each withheld record or part. In addition, where a record has been disclosed in part, the institution should provide either a highlighted copy showing the severances, or a copy of both the severed and unsevered version, to the IPC. Further guidelines for the records package are included in the attached checklist and sample record.

10. When an institution has decided not to release a record, the Freedom of Information and Privacy Co-ordinator should retain custody of the record for at least 60 days following the decision before returning it to the program area of the institution. In this way, if an appeal is filed, the Co-ordinator has the record and can submit it promptly to the IPC without having to retrieve it from the program area.

Security of records

11. Records are subject to strict security while at the IPC. The IPC's security arrangements satisfy the security standards of the Ontario Provincial Police.

Confidentiality of records

12. The IPC is prohibited from disclosing any information that comes to its knowledge in the performance of its powers, duties and functions.

13. The IPC never releases records at issue directly to a requester or an affected person. If, during the course of mediation, an institution agrees to release a record, arrangements for the release will be made by the institution, not the IPC. Similarly, where an Adjudicator orders that a record be disclosed, the obligation to disclose rests with the institution.

Returning or shredding records

14. The IPC is prohibited from retaining any information obtained from a record. In the case of an appeal settled through mediation, the IPC's practice is to shred the records three months after the settlement date. In the case of appeals disposed of by order, the IPC's practice is to shred the records one year after the order was issued.

15. If an institution requires its records to be returned, the institution should advise the IPC before the end of the three-month or one-year period.

16. When the IPC returns records to an institution, they are either hand-delivered by an IPC staff member or sent by a bonded courier, depending on the location of the institution.

Practice Direction

is published by the Office of the Information and Privacy Commissioner.

If you have any comments regarding this document, wish to advise of a change of address, or be added to the electronic mailing list, contact:

Communications Department
Information and Privacy Commissioner/Ontario
80 Bloor Street West, Suite 1700
Toronto, Ontario M5S 2V1
Telephone: (416) 326-3333 • 1-800-387-0073
Facsimile: (416) 325-9195
TTY (Teletypewriter): (416) 325-7539
Web site: http://www.ipc.on.ca
Cette publication, intitulée « Directive de pratique », est également disponible en français.

INFORMATION
AND PRIVACY
COMMISSIONER/
ONTARIO

Checklist of critical elements for a well-organized records package

- ☐ Number the records;
- ☐ Number the pages of each record;
- ☐ Clearly indicate the claimed exemptions on each record;
- ☐ Where more than one exemption is claimed per record, or for a portion of a record, indicate the exemptions being claimed in the margin of each page;
- ☐ Ensure photocopies are legible and complete;
- ☐ Where larger than standard pages are being photocopied, ensure the appropriate size paper is used;
- ☐ Send only the records at issue in the appeal (generally, those to which access has been denied in full or in part);
- ☐ Highlight severed portions of records in a way that leaves it legible for the IPC;
- ☐ When highlighting is not possible because an institution has already "blacked out" a portion of the record, provide two sets of records, one with the blacked out sections and one unsevered copy of the original;
- ☐ Attach an index to the records package showing the record number (where one is assigned), the name (or other description) of each document, its creation date, whether it was disclosed in whole or in part or entirely withheld, and what exemption has been claimed for each withheld record or part.

INFORMATION
AND PRIVACY
COMMISSIONER/
ONTARIO

Sample Record

Ultrasecure Detention Centre — Security Review

In order to do a complete review of the security features at Ultrasecure Detention Centre, a number of areas were canvassed. In addition to taking a tour of the facility and noting the various security features that currently exist, I also reviewed the policy and procedural manual, all incident reports for the years 1998–1999 and maintenance records for the years 1998–1999.

The policy and procedures manual section on security is current and comprehensive in terms of the existing security features. My review of the incident reports for the years 1998–1999 supports the view that the incidents which have occurred have not resulted in security breaches.

It is the maintenance records that signal the greatest area of concern. For the period 1998–1999 there were a total of 100 service requisitions relating to security features.

In particular, the fence alarm, the release mechanisms on door models APX-205 and the five hidden cameras in Area C repeatedly malfunctioned and had to be repaired a total of 63 times at a total expenditure of $350,000. 14(1)(j) 14(1)(k)

In view of the above, it is my recommendation that we allocate $750,000 to replace the existing fence alarm, release mechanisms and hidden cameras with the upgraded 1999 models. I make this recommendation because these particular security features are mandatory and not upgrading them would jeopardize the future security of the Ultrasecure Detention Centre. 13(1)

A.R.O. Smith
Security Manager
Ultrasecure Detention Centre

Number 2
August 2000

Practice Direction

Representations: general guidelines

Introduction

This *Practice Direction* offers practical guidelines to help improve the effectiveness of representations made to the IPC under the *Act*.

The parties should submit representations that are relevant and factual, and refer to the connections between exemptions claimed under the *Act* and the records in question, or alternatively, explain why an exemption should not apply.

Burden of proof

Where an institution claims that a record or part is exempt, the *Act* places on the institution the burden of proof that the exemption applies.

Notice of Inquiry

In appeals streamed to the Adjudication stage, an Adjudicator sends a Notice of Inquiry to one or more parties to help them determine how to make their case. This document summarizes the background of the appeal, describes the records at issue, sets out the issues to be decided, and invites the party to submit representations in writing.

Representations

Representations are arguments or evidence presented to the Adjudicator to persuade him or her to resolve the appeal in a particular way.

Parties should ensure that they have carefully reviewed the Notice of Inquiry and any accompanying materials, and that in their representations they address each of the issues raised in the Notice of Inquiry to which they would like to respond. Parties are also encouraged to review any relevant IPC orders, other case law or statutory materials and to include references to such material in their representations. Copies of this material should also be provided to assist the Adjudicator.

Sharing of representations

Representations may be shared with the other party or parties to the appeal, unless there is an overriding confidentiality concern. Please see *Practice Direction* number 7 for more detailed information about sharing of representations.

Parties should ensure that they explain which portions of their representations, if any, they would like withheld from other parties to the appeal. Parties also should explain which

material they would like withheld from which parties. It is important that parties provide detailed reasons for their request to have the Adjudicator withhold representations.

Additional Information

The IPC has issued *Practice Directions* to provide general information to specific types of parties involved in an appeal, and to assist them in making representations. Please see *Practice Direction* number 3 — Guidelines for individuals whose personal information is at issue in an appeal, *Practice Direction* number 4 — Guidelines for parties whose commercial or business information is at issue in an appeal and *Practice Direction* number 5 — Guidelines for institutions in making representations, for more specific information.

Practice Direction

is published by the Office of the Information and Privacy Commissioner.

If you have any comments regarding this document, wish to advise of a change of address, or be added to the electronic mailing list, contact:

Communications Department
Information and Privacy Commissioner/Ontario
80 Bloor Street West, Suite 1700
Toronto, Ontario M5S 2V1
Telephone: (416) 326-3333 • 1-800-387-0073
Facsimile: (416) 325-9195
TTY (Teletypewriter): (416) 325-7539
Web site: http://www.ipc.on.ca
Cette publication, intitulée « Directive de pratique », est également disponible en français.

Number 3
August 2000

Practice Direction

Guidelines for individuals whose personal information is at issue in an appeal

Background

People sometimes want access to government records that contain someone else's personal information. Under the *Act*, we refer to that someone else as an "affected person."

If someone wants access to information held by an institution, he or she makes a request under the *Act*. A request may be for information of a named affected person, or it may be general in nature but encompass specific information about an affected person (e.g., a request for all information about witnesses to motor vehicle accident).

Here are answers to questions most frequently asked about appeals where the personal information of an affected person is at issue.

What is "personal information?"

According to the *Act*, personal information means recorded information about an identifiable individual. This may include your name, address, sex, age, education, medical and employment history, views or opinions, or any other information about you held by a government institution.

Why would someone want access to my personal information?

There could be many reasons why someone might want access to your personal information. Here are a few examples:

1. You registered a complaint that a neighbour's dog is causing a disturbance. The neighbour wants to know who made the complaint; or
2. You provided a witness statement to the police about a car accident. The owner of one of the vehicles is seeking access to that statement; or
3. Someone requests a government job competition file where you were a candidate.

Why didn't the institution notify me when the access request was first made?

If the institution that received the request decides not to disclose your information, you usually will not be contacted. However, as the IPC has now received this request in the form of an appeal, we must now contact you.

What is an appeal?

A requester can ask the IPC to review an institution's decision not to disclose information in response to an access request under the *Act*. This is referred to as an appeal.

What happens once the IPC receives an appeal?

If it is not possible to settle the appeal through mediation, an Adjudicator sends a Notice of Inquiry to one or more parties. The Notice of Inquiry summarizes the background of the appeal, describes the records at issue, sets out the issues to be decided, and invites the party to submit representations in writing. Once all necessary representations are received, they are considered by the Adjudicator, and an order is issued which disposes of some or all of the issues.

What are representations?

Representations are arguments and/or evidence presented to the Adjudicator to persuade him or her to resolve the appeal in a particular way.

Why did the IPC ask me to make representations?

The IPC may ask an individual to submit representations as an affected person when it appears that the records at issue may contain that individual's personal information. The *Act* gives an affected person the right to comment on whether this information should be disclosed.

How do I make representations?

You may make representations by providing a written response to the issues raised in the Notice of Inquiry, responding to some or all of the issues as you see fit. If you feel that the information should *not* be disclosed and that the exemption applies, this is your opportunity to provide the IPC with specific reasons why you believe so.

Why should I make representations?

With respect to personal information, the institution (where it has denied access) and the affected person share the responsibility for establishing why the information should not be disclosed. In appeals involving this type of information, it is important that the Adjudicator hear from the affected person for two reasons: (1) the institution is not obliged to provide representations to support its decision not to disclose the information; and (2) the affected person is in the best position to describe the effects that disclosure could have on his or her interests.

What kinds of information should I include?

The Notice of Inquiry will set out the issues to be addressed. For example, you might be asked to explain why the records contain your personal information, or to present arguments or evidence to show why disclosure of the information would constitute an unjustified invasion of your personal privacy.

When are my representations due?

A party is generally given 21 days to submit representations to the Adjudicator. The exact due date is specified in the Notice of Inquiry.

What might happen if I do not make any representations?

If you do not make representations, the Adjudicator will proceed to determine the issues in their absence. By making representations, you may improve the chances of obtaining a favourable result in the appeal.

What if I agree that my personal information can be disclosed?

Where this is the case, you should simply indicate in your representations that you consent to disclosure of the information. If you consent only to partial disclosure, it is necessary to identify for the Adjudicator the specific portions of the record that you agree may be disclosed.

Will my representations be shared with any other party?

The Adjudicator may share your representations with the other party or parties to the appeal, unless there are overriding confidentiality concerns. If you would like any portion of your representations withheld, you must explain in detail the reasons for your request. Please see *Practice Direction* number 7 for more detailed information about sharing of representations.

What happens after the representations are submitted?

The Adjudicator will consider the representations and resolve some or all of the issues in the appeal by issuing a written order. The Adjudicator will send copies of this order to you and the other parties involved in the appeal by mail.

Will my personal information be disclosed?

In most cases, this depends on whether the release of the information would be considered an unjustified invasion of your personal privacy. The *Act* contains a number of provisions which will help the Adjudicator make this determination. These provisions are described in detail in the Notice of Inquiry.

Who can answer additional questions?

For general questions about personal information at the appeal stage, please contact the IPC's Assistant Registrar. This individual's name and telephone number appear on the covering letter attached to the Notice of Inquiry. The IPC can also be reached by dialling 1-800-387-0073 (in the Toronto area, dial 416-326-3333).

For questions about the nature of the records which contain your personal information, please contact the Freedom of Information and Privacy Co-ordinator at the institution identified in the Notice of Inquiry.

Practice Direction

is published by the Office of the Information and Privacy Commissioner.

If you have any comments regarding this document, wish to advise of a change of address, or be added to the electronic mailing list, contact:

Communications Department
Information and Privacy Commissioner/Ontario
80 Bloor Street West, Suite 1700
Toronto, Ontario M5S 2V1
Telephone: (416) 326-3333 • 1-800-387-0073
Facsimile: (416) 325-9195
TTY (Teletypewriter): (416) 325-7539
Web site: http://www.ipc.on.ca
Cette publication, intitulée « Directive de pratique », est également disponible en français.

Number 4
August 2000

Practice Direction

Guidelines for parties whose commercial or business information is at issue in an appeal

Background

Government institutions collect commercial or business information as part of their role in providing services to the public. For example, people give information about their business when they fill out an application for a program or service, such as registering a corporation or applying for a grant. People also provide information to the government when they bid on a government tender.

People sometimes want access to government records that contain a business entity's scientific, technical, commercial, financial or labour relations information, or trade secret. Under the *Act*, we refer to that business entity as an "affected person," or "third party," and that type of information as "third party information."

If someone wants access to information held by an institution, he or she makes a request under the *Act*. A request may be for information of a named third party, or it may be general in nature but encompass specific third party information (e.g., a request for all tenders for a particular project).

The institution that receives the request then determines whether this information can be disclosed.

Here are answers to questions most frequently asked about appeals where third party information is at issue:

Why would someone want access to my information?

There could be many reasons why someone might want access to your information held by an institution. Here are some examples:

1. You were the successful bidder on a government tender, and someone wants to see the structure of the bid;

2. You received a government grant, and someone wants to find out the details or the amount of funding;

3. You and the institution are engaged in a joint business venture. Someone wants to see a copy of the agreement setting out the terms of the business deal.

Why didn't the institution notify me when the access request was first made?

If the institution that received the request decides not to disclose a third party's information, the third party usually will not be contacted.

What is an appeal?

A requester can ask the IPC to review an institution's decision not to disclose information in response to an access request under the *Act*. This is referred to as an appeal.

What happens once the IPC receives an appeal?

If it is not possible to settle the appeal through mediation, the Adjudicator sends a Notice of Inquiry to one or more parties. The Notice of Inquiry summarizes the background of the appeal, describes the records at issue, sets out the issues to be decided, and invites the party or parties to submit representations in writing. Once all necessary representations are received, they are considered by the Adjudicator, and an order is issued which disposes of some or all of the issues.

What are representations?

Representations are arguments and/or evidence presented to the Adjudicator to persuade him or her to resolve the appeal in a particular way.

Why did the IPC ask me to make representations?

The IPC may ask a third party to submit representations when it appears that the records at issue may contain the third party's commercial, financial, scientific, technical or labour relations information, or trade secret. The *Act* gives a third party the right to comment on whether this information should be disclosed.

How do I make representations?

You may make representations by providing a written response to the issues raised in the Notice of Inquiry, responding to some or all of the issues as you see fit. If you feel that the information should *not* be disclosed and that the exemption applies, this is your opportunity to provide the Adjudicator with specific reasons why you believe so.

Why should I make representations?

With respect to third party information, the institution (where it has denied access) and the third party share the responsibility for establishing why the information should not be disclosed. In appeals involving this type of information, it is important that the Adjudicator hear from the third party for two reasons: (1) the institution is not obliged to provide representations to support its decision not to disclose the information; and (2) the third party is in the best position to describe the effects that disclosure could have on their interests.

What kinds of information should be included?

The Notice of Inquiry will set out the issues to be addressed. For example, you might be asked to explain why you take the position that the information in the records was supplied to the institution in confidence, or to present arguments or evidence to show why disclosure of the information could reasonably be expected to result in one of the harms specified in the *Act*.

When are representations due?

A party is generally given 21 days to submit representations to the Adjudicator. The exact due date is specified in the Notice of Inquiry.

What might happen if I do not submit representations?

If you do not make representations, the Adjudicator will proceed to determine the issues in their absence. By making representations, you may improve the chances of obtaining a favourable result in the appeal.

What if I agree that the information at issue can be disclosed?

Where this is the case, you should simply indicate in your representations that you consent to disclosure of the information. If you consent only to partial disclosure, it is necessary to identify for the Adjudicator the specific portions of the record that you agree may be disclosed.

Will my representations be shared with any other party?

The Adjudicator may share your representations with the other party or parties to the appeal, unless there are overriding confidentiality concerns. If you would like any portions of your representations withheld, you must explain in detail the reasons for your request. Please see *Practice Direction* number 7 for more detailed information about sharing of representations.

What happens after I submit my representations?

An Adjudicator will consider the representations and resolve some or all of the issues in the appeal by issuing a written order. The Adjudicator will send copies of this order to you and the other parties involved in the appeal by mail.

Will my third party information be disclosed?

This depends on whether the release of the information meets the three-part test as required by the third party information exemption. This test is described in detail in the Notice of Inquiry.

Who can answer additional questions?

For general questions about third party information at the appeal stage, please contact the IPC's Assistant Registrar. This individual's name and telephone number appear on the covering letter attached to the Notice of Inquiry. The IPC can also be reached by dialling 1-800-387-0073 (in the Toronto area, dial 416-326-3333).

For questions about the nature of the records which contain your third party information, please contact the Freedom of Information and Privacy Co-ordinator at the institution identified in the Notice of Inquiry.

Practice *Direction*

is published by the Office of the Information and Privacy Commissioner.

If you have any comments regarding this document, wish to advise of a change of address, or be added to the electronic mailing list, contact:

Communications Department
Information and Privacy Commissioner/Ontario
80 Bloor Street West, Suite 1700
Toronto, Ontario M5S 2V1
Telephone: (416) 326-3333 • 1-800-387-0073
Facsimile: (416) 325-9195
TTY (Teletypewriter): (416) 325-7539
Web site: http://www.ipc.on.ca
Cette publication, intitulée « Directive de pratique », est également disponible en français.

Number 5
August 2000

Practice Direction

Guidelines for institutions in making representations

Introduction

Each exemption under the *Act* has certain requirements which must be satisfied. It is important that institutions claiming an exemption address each component of these requirements. If representations are too general or if the necessary connections are not clearly made, the representations will fail to establish that the exemption applies. The questions below are intended to assist institutions in assessing the issues in an appeal and the topics to cover in their representations.

For every exemption claimed:

- Have you clearly identified the record or part at issue?
- Have you identified the exemptions that apply to each part of the record which has been withheld from disclosure?
- Have you reviewed the Notice of Inquiry which the Adjudicator has provided to your institution for guidance?
- Have you addressed each of the issues and/or answered each of the questions set out in the Notice of Inquiry?
- Have you reviewed previous orders to determine how the exemption has been interpreted in the past?

Where an exemption is discretionary:

- Have you considered whether the institution should rely on this exemption, in the particular circumstances of the appeal?
- If so, have you explained the basis for the head's exercise of discretion to withhold the record?

Where an exemption requires proof that a particular consequence would result from disclosure of a record:*

- Have you identified the consequence in detail?
- Have you provided detailed and convincing evidence establishing a reasonable expectation of the harm described in the exemption?

* e.g., the third party information and danger to safety or health exemptions

INFORMATION
AND PRIVACY
COMMISSIONER/
ONTARIO

Where an exemption requires proof that a record was prepared for a particular purpose:*

- Have you provided facts to support your claim?
- Have you identified the facts which apply to each component of the exemption?

* e.g., the solicitor-client privilege exemption

Where an exemption requires proof that a record or information was provided or received in confidence:*

- Have you furnished details of the circumstances in which the record or information was provided or received?
- Have you provided evidence of the expectation of confidentiality and shown that this expectation was reasonable?

* e.g., the third party information exemption

Where an exemption requires proof that a record is one of the types of records listed in the exemption or that it contains certain types of information:*

- Have you identified the particular type of record?
- Have you provided reasons why the record fits into this category?

* e.g., the Cabinet records and economic and other interests of Ontario exemptions

Where the personal information exemption is claimed:

- Have you identified which information in the record constitutes "personal information," why this is so and to whom it relates?
- Have you considered whether the record contains the requester's personal information? If so, consider the provisions of the *Act* granting a right of access to one's own personal information and the related personal privacy exemption. In addition, consider the discretionary nature of this exemption. If not, consider the general personal privacy exemption.
- Have you considered and presented the facts and circumstances that are relevant in determining whether disclosure of this information would constitute an unjustified invasion of personal privacy?

Sharing of representations

- Have you explained which portions of the representations, if any, you would like withheld from other parties to the appeal?
- Have you explained which material you would like withheld from which parties?
- Have you provided detailed reasons for your request to have the Adjudicator withhold representations?

Practice *Direction*

is published by the Office of the Information and Privacy Commissioner.

If you have any comments regarding this document, wish to advise of a change of address, or be added to the electronic mailing list, contact:

Communications Department
Information and Privacy Commissioner/Ontario
80 Bloor Street West, Suite 1700
Toronto, Ontario M5S 2V1
Telephone: (416) 326-3333 • 1-800-387-0073
Facsimile: (416) 325-9195
TTY (Teletypewriter): (416) 325-7539
Web site: http://www.ipc.on.ca
Cette publication, intitulée « Directive de pratique », est également disponible en français.

Number 6
August 2000

Practice Direction

Affidavit and other evidence

In appeals before the IPC, evidence is often provided to satisfy particular factual or legal requirements or to provide background information. Where an exemption is claimed, evidence may be necessary to satisfy the criteria for the application of the exemption. In a written inquiry process, affidavit evidence may be desirable because, unlike other statements made to the Adjudicator, affidavit evidence is given under oath.

General

1. An affidavit is a written statement made under oath. Affidavits are a common method of providing evidence. An affidavit must be sworn or affirmed before a person who is qualified as a Commissioner for administering oaths or affirmations in the Province of Ontario.

Use of affidavit evidence

2. The IPC may request an affidavit to assist in its determination of factual issues in an appeal.

3. At the Mediation stage, where a Mediator believes that an affidavit may help to resolve the appeal, the Mediator may request a party to provide an affidavit to the IPC. In such a case, the Mediator will seek the consent of the party to provide another party or parties involved in the appeal with a copy of the affidavit. If the party consents to sharing the affidavit, the Mediator will provide a copy to the other party or parties.

4. Where the IPC requests an affidavit at the Adjudication stage of an appeal, the Notice of Inquiry will specify the relevant issues in the appeal and the types of information that should be included.

5. If a factual issue may be contentious, parties should consider providing their evidence concerning that issue to the IPC in affidavit form.

Further guidelines

6. An affidavit must contain information about the person swearing the affidavit, including the individual's name and an explanation

of how he or she has knowledge of the evidence being presented in the affidavit (often satisfied by a description of the individual's qualifications and/or job responsiblities). The affidavit must also specify the municipality and county or region where the person swearing the affidavit resides.

7. Affidavit evidence should be detailed enough to allow the IPC and/or the other party or parties receiving it to fully understand its contents, and should, wherever possible, be confined to facts within the personal knowledge of the person swearing the affidavit. Sample affidavits are attached to this *Practice Direction*.

Practice Direction

is published by the Office of the Information and Privacy Commissioner.

If you have any comments regarding this document, wish to advise of a change of address, or be added to the electronic mailing list, contact:

Communications Department
Information and Privacy Commissioner/Ontario
80 Bloor Street West, Suite 1700
Toronto, Ontario M5S 2V1
Telephone: (416) 326-3333 • 1-800-387-0073
Facsimile: (416) 325-9195
TTY (Teletypewriter): (416) 325-7539
Web site: http://www.ipc.on.ca
Cette publication, intitulée « Directive de pratique », est également disponible en français.

Sample Affidavit

INFORMATION AND PRIVACY COMMISSIONER/ONTARIO

IN THE MATTER OF Appeal Number *(insert appeal number)* under the *Freedom of Information and Protection of Privacy Act* (or the *Municipal Freedom of Information and Protection of Privacy Act)*

AFFIDAVIT OF *(name of person swearing the affidavit)*

I, *(name of person swearing the affidavit)*, of the *(municipality of residence)* in the *(county or region of residence)* make oath and say *(or affirm)*:

1. I am *(description of individual, including job title and employer where relevant)*. Because of *(insert reasons)*, I have personal knowledge of the facts as set out in this affidavit.

2. [This section should the relevant facts, using single numbered paragraphs. Provide names and job titles where relevant.]

3. This affidavit is made for the purpose of supporting *(or appealing) (name of institution)*'s decision *(describe decision)* and for no other purpose.

Sworn *(or Affirmed)* before me at the)
(municipality where affidavit sworn) in the)
(county or region where affidavit sworn),)
on *(date affidavit sworn)*)

_____
(signature of person swearing affidavit)

Commissioner for Taking Affidavits
(name of person taking the affidavit)

NUMBER 7
AUGUST 2000

Practice Direction

Sharing of representations

Application

1. This *Practice Direction* applies to an inquiry conducted in the Adjudication stage under section 7 of the *Code of Procedure*.

General

2. The Adjudicator may provide representations received from a party to the other party or parties, unless the Adjudicator decides that some or all of the representations should be withheld.

Request to withhold representations

3. A party providing representations shall indicate clearly and in detail, in its representations, which information in its representations, if any, the party wishes the Adjudicator to withhold from the other party or parties.

4. A party seeking to have the Adjudicator withhold information in its representations from the other party or parties shall explain clearly and in detail the reasons for its request, with specific reference to the following criteria.

Criteria for withholding representations

5. The Adjudicator may withhold information contained in a party's representations where:

   (a) disclosure of the information would reveal the substance of a record claimed to be exempt; or

   (b) the information would be exempt if contained in a record subject to the *Act*; or

   (c) the information should not be disclosed to the other party for another reason.

6. For the purpose of section 5(c), the Adjudicator will apply the following test:

   (i) the party communicated the information to the IPC in a confidence that it would not be disclosed to the other party;

   (ii) confidentiality is essential to the full and satisfactory maintenance of the relation between the IPC and the party;

(iii) the relation is one which in the opinion of the community ought to be diligently fostered; and

(iv) the injury to the relation that would result from the disclosure of the information is greater than the benefit gained for the correct disposal of the appeal.

Request to withhold representations not accepted

7. Should the Adjudicator decide not to accept a party's submission that information in its representations should be withheld, the Adjudicator will notify the party of this decision and will not disclose the information for the period of time specified in the notice, which shall not be less than 14 days.

Practice Direction

is published by the Office of the Information and Privacy Commissioner.

If you have any comments regarding this document, wish to advise of a change of address, or be added to the electronic mailing list, contact:

Communications Department
Information and Privacy Commissioner/Ontario
80 Bloor Street West, Suite 1700
Toronto, Ontario M5S 2V1
Telephone: (416) 326-3333 • 1-800-387-0073
Facsimile: (416) 325-9195
TTY (Teletypewriter): (416) 325-7539
Web site: http://www.ipc.on.ca
Cette publication, intitulée « Directive de pratique », est également disponible en français.

Number 8
August 2000

Practice Direction

Reasonable search appeals

Application

1. This *Practice Direction* applies to a Reasonable Search Appeal under section 9 of the *Code of Procedure*.

Format of representations

2. Where practicable, the parties shall make representations in the inquiry orally and in person at the offices of the IPC. In other cases, the parties shall make representations in the inquiry orally and by telephone.

Representation by agent or counsel

3. A party may be represented in the inquiry by counsel or an agent, who may give representations on the party's behalf. In addition, other individuals may give representations on the party's behalf, at the request of either the party or the Adjudicator.

Conduct of inquiry

4. The Adjudicator will conduct the inquiry. The Mediator will be present at the inquiry. At any time during or after the representations portion of the inquiry, prior to the Adjudicator making an order, the Adjudicator may offer the parties an opportunity to settle the matter themselves or with the assistance of the Mediator, within an established time frame.

5. The Adjudicator will begin the representations portion of the inquiry by reciting a summary of the facts and issues in the appeal, and then provide an opportunity for the parties to comment on the summary. The Adjudicator will then invite the parties to make their representations, one party at a time. The Adjudicator may ask questions of a party (or an individual giving representations on behalf of a party) during or after its representations, on the Adjudicator's own initiative or at the request of the other party.

6. During the representations portion of the inquiry, all questions, statements or requests for clarification by a party concerning the other party's representations shall be directed through the Adjudicator.

Tape recording

7. The IPC will record the representations portion of the inquiry on audio tape. A party (or the party's representative) is entitled to a copy of the tape, which the IPC will provide on request if the party provides the IPC with a suitable blank tape. Persons other than the parties, their representatives and IPC staff will not be given access to the tape.

8. The IPC will not record any settlement or mediation discussions on audio tape.

Practice Direction

is published by the Office of the Information and Privacy Commissioner.

If you have any comments regarding this document, wish to advise of a change of address, or be added to the electronic mailing list, contact:

Communications Department
Information and Privacy Commissioner/Ontario
80 Bloor Street West, Suite 1700
Toronto, Ontario M5S 2V1
Telephone: (416) 326-3333 • 1-800-387-0073
Facsimile: (416) 325-9195
TTY (Teletypewriter): (416) 325-7539
Web site: http://www.ipc.on.ca
Cette publication, intitulée « Directive de pratique », est également disponible en français.

Number 9
August 2000

Practice Direction

Constitutional questions

Introduction

1. This *Practice Direction* provides further information about constitutional questions raised in an appeal as discussed in section 12 of the *Code of Procedure*.

Circumstances where notice required/ to whom notice must be given

2. Where a party intends,

   (a) to raise a question about the constitutional validity or applicability of legislation, a regulation or a by-law made under legislation, or a rule of common law, or

   (b) to claim a remedy under the *Canadian Charter of Rights and Freedoms*, notice of a constitutional question shall be served on the IPC.

Time limits

3. An appellant will be permitted to raise a constitutional question at first instance or an additional constitutional question only within a 35-day period after giving the IPC notice of his or her appeal.

4. Any other party will be permitted to raise a constitutional question only within a 35-day period after receiving notice of the appeal.

5. The Adjudicator has the discretion not to consider a constitutional question raised after the applicable time limit if the appeal proceeds to inquiry.

Form of notice

6. A notice of constitutional question shall be in the form attached to this *Practice Direction*, or in a similar form that contains the same information.

7. The party raising the constitutional question shall serve notice of the constitutional question on the IPC, leaving blank the dates when the constitutional question will be argued and when the Attorneys General of Canada and Ontario should notify the IPC of their intention to participate.

8. The IPC will add those dates and will ensure that the notice is served on the Attorneys General and on any other parties to the inquiry.

Where IPC believes notice required

9. If the IPC notifies a party that in its opinion a matter raises a constitutional question and requires that a notice of constitutional question be served, the party shall within the time set out by the IPC either

   (i) serve the notice of constitutional question on the IPC, or

   (ii) provide the IPC with submissions as to why the party believes a notice of constitutional question is not required.

Representations on whether notice required

10. The IPC may seek representations from other parties as to whether the matter raises a constitutional question.

Objection to notice

11. If the party objects to serving a notice of constitutional question, after receiving submissions, the IPC will either

   (i) notify the party that it is not necessary to serve a notice of constitutional question, or

   (ii) direct the party to serve a notice of constitutional question and set a date for doing this.

Sharing representations

12. The IPC may share representations on constitutional questions with all parties in accordance with the IPC's *Code of Procedure* and *Practice Direction* number 7.

Practice Direction

is published by the Office of the Information and Privacy Commissioner.

If you have any comments regarding this document, wish to advise of a change of address, or be added to the electronic mailing list, contact:

Communications Department
Information and Privacy Commissioner/Ontario
80 Bloor Street West, Suite 1700
Toronto, Ontario M5S 2V1
Telephone: (416) 326-3333 • 1-800-387-0073
Facsimile: (416) 325-9195
TTY (Teletypewriter): (416) 325-7539
Web site: http://www.ipc.on.ca
Cette publication, intitulée « Directive de pratique », est également disponible en français.

INFORMATION
AND PRIVACY
COMMISSIONER/
ONTARIO

Notice of Constitutional Question Form

INFORMATION AND PRIVACY COMMISSIONER/ONTARIO

IN THE MATTER OF Appeal Number (*insert appeal number*) under the *Freedom of Information and Protection of Privacy Act* (or the *Municipal Freedom of Information and Protection of Privacy Act*)

NOTICE OF CONSTITUTIONAL QUESTION

The (*identify party*) intends to question the constitutional validity or applicability of (*identify the particular legislative provisions or the particular rule of common law*) (*or* to claim a remedy under subsection 24(1) of the *Canadian Charter of Rights and Freedoms* in relation to an act or omission of an institution) in an appeal to be argued in writing on (*day*), (*month*), (*year*).

The following are the material facts giving rise to the constitutional question: (*Set out concisely the material facts that relate to the constitutional question. Attach the decision that is being appealed and any other relevant documentation where appropriate.*).

The following is the legal basis for the constitutional question: (*Set out concisely the legal basis for each question, identifying the nature of the constitutional principles to be argued.*).

An Attorney General who wishes to participate in the argument must file written representations on the constitutional question by the date set out above or notify the Information and Privacy Commissioner/Ontario at least five days before that date if an extension of time is requested.

(*Date*)

(*Name, address, telephone number of the party or the party's counsel or agent*)

To: Attorney General of Ontario
Constitutional Law Branch
8th Floor
720 Bay Street
Toronto, Ontario
M5G 2K1
fax: (416) 326-4015

Attorney General of Canada
Suite 3400, Exchange Tower
Box 36, First Canadian Place
Toronto, Ontario
M5X 1K6
fax: (416) 973-3004

(All other parties to the appeal)

Number 10
August 2000

Practice Direction

Appeal fees

General

1. The *Act* requires a person who wishes to appeal a decision of an institution to pay an appeal fee as set by regulation.

When fee to be paid

2. An appellant should provide the IPC with the applicable appeal fee at the time the appeal is made.

To whom fee payable

3. The appeal fee may be paid by cheque or money order, payable to "THE MINISTER OF FINANCE."

Applicable fees

4. An appellant who requested access to, or correction of, his or her own personal information must pay a fee of $10. An appellant who requested other information must pay a fee of $25.

No fee required

5. An appellant who did not make a request, but is appealing an institution's decision to disclose information relating to the appellant, is not required to pay an appeal fee.

6. An appellant is not required to pay an additional appeal fee for any subsequent appeal from a decision of an institution concerning the same request.

Practice Direction

is published by the Office of the Information and Privacy Commissioner.

If you have any comments regarding this document, wish to advise of a change of address, or be added to the electronic mailing list, contact:

Communications Department
Information and Privacy Commissioner/Ontario
80 Bloor Street West, Suite 1700
Toronto, Ontario M5S 2V1
Telephone: (416) 326-3333 • 1-800-387-0073
Facsimile: (416) 325-9195
TTY (Teletypewriter): (416) 325-7539
Web site: http://www.ipc.on.ca
Cette publication, intitulée « Directive de pratique », est également disponible en français.

20% recycled paper, including 20% post-consumer fibre

Number 11
December 2001

Practice Direction

Appeal Form

An appeal may be made by sending to the Registrar a completed form as attached to this *Practice Direction*, or in any other written form as described in section 4.04 of the *Code of Procedure*.

Practice Direction

is published by the Office of the Information and Privacy Commissioner.

If you have any comments regarding this document, wish to advise of a change of address, or be added to the electronic mailing list, contact:

Communications Department
Information and Privacy Commissioner/Ontario
80 Bloor Street West, Suite 1700
Toronto, Ontario M5S 2V1
Telephone: (416) 326-3333 • 1-800-387-0073
Facsimile: (416) 325-9195
TTY (Teletypewriter): (416) 325-7539
Web site: http://www.ipc.on.ca
Cette publication, intitulée « Directive de pratique », est également disponible en français.

Information and Privacy Commissioner/Ontario

Appeal Form

Appeal under the
Freedom of Information and Protection of Privacy Act (FIPPA)
or the
Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)

Note: An appeal must be sent in writing **to the Registrar within 30 days** after the institution has given notice of its decision.

The government organization which dealt with your request is referred to as an "institution" under the *Acts*.

Your Information

☐ Mr. ☐ Mrs. ☐ Ms. ☐ Miss

Surname or _____ Given Name _____ Initials ____
Name of Company, Association or Organization

Address _____ Unit _____

City _____ Province _____ Postal Code _____

Telephone daytime _____ evening _____

If this appeal is not being made in a personal capacity, please provide the following information:

Name of Contact _____ Title _____ Telephone _____

Please select *one* of the following:

☐ I made a request for access to a general record, and have enclosed the required $25.00 appeal fee.

☐ I made a request for access to my own personal information and have enclosed the required $10.00 appeal fee.

☐ I made a request to correct my own personal information and have enclosed the required $10.00 appeal fee.

☐ I received a notice that the institution intends to disclose a record/personal information that may relate to me. (No appeal fee required.)

Representative Information **(Complete only if you will be represented.)**

I authorize the following person to act on my behalf and to receive any personal information pertaining to me, as necessary for the purposes of this appeal.

Representative is a: ☐ Lawyer ☐ Agent ☐ Mr. ☐ Mrs. ☐ Ms. ☐ Miss

Surname _____ Given Name _____ Initials ____

Name of Company, Association or Organization _____

Address _____ Unit _____

City _____ Province _____ Postal Code _____

Telephone daytime _____ evening _____

Information and Privacy Commissioner/Ontario

Institution Information (if available)

NAME OF INSTITUTION _____ INSTITUTION FILE NUMBER _____

Consent to Provide a Copy of this Form to the Institution

☐ I consent to a copy of this form being provided to the institution.

☐ I do not consent to a copy of this form being provided to the institution.

Attachments

The following documents have been attached (if available):

☐ Copy of the request.

☐ Copy of the institution's decision letter.

☐ Appeal fee made payable to the Minister of Finance (if required).

Details of the Appeal

Please select the box(es) that explain why the appeal is being made.

☐ **Deemed Refusal** – It is more than 30 days since I made my request and I have not received a decision.

☐ **Failure to Disclose Records** – The institution decided to grant access to requested records but I have not received them.

☐ **Time Extension** – The institution decided to extended the time limit for responding to my request, and I disagree.

☐ **No Jurisdiction** – The institution indicated that the requested records are excluded from the *Act* and I disagree.

☐ **Reasonable Search** – The institution indicated that some or all of the requested records do not exist and I believe that more records do exist.

☐ **Frivolous or Vexatious** – The institution indicated my request is frivolous or vexatious and I disagree.

☐ **Exemptions** – The institution has exempted all or part of the requested records and I believe that more of them should be disclosed.

☐ **Interim Decision** – Because of the number of records at issue, the institution reviewed a sample of the records or consulted an experienced employee, advised me of the exemptions that might apply, and provided me with a fee estimate. I disagree with the amount of the fee estimate.

☐ **Fee/Fee Estimate** – The institution sent me an access decision that included a fee or fee estimate that I feel is excessive.

☐ **Fee Waiver** – The institution has refused to grant my request to waive the fees.

☐ **Refusal to Confirm or Deny** – The institution has refused to confirm or deny the existence of the requested records.

☐ **Correction** – The institution has refused to make corrections to my personal information.

☐ **Third Party** – The institution has indicated it will grant access to a record/personal information that may relate to me or the appellant, and I feel this information should not be disclosed.

☐ **Other** – please explain:

Information and Privacy Commissioner/Ontario

Resolution of Appeal

Please describe how you feel this appeal could be resolved.

Previous Appeals

Please list any previous appeals with the Information and Privacy Commissioner/Ontario that may relate to this matter.

Information about the Appeal Process

For more information about the processes of the Information and Privacy Commissioner/Ontario and the Code of Procedure for appeals, please contact our office at 416-326-3333, toll-free at 1-800-387-0073, or visit our Web site at www.ipc.on.ca.

Where to Send this Form

This form, the applicable fee, and any additional documentation must be sent in writing to the Registrar within 30 days after the institution has given notice of its decision. The cheque should be payable to the Minister of Finance. DO NOT SEND CASH. Mail the above to:

Registrar
Information and Privacy Commissioner/Ontario
1700-80 Bloor Street West
Toronto, Ontario
M5S 2V1

Signature

YOUR SIGNATURE _____ DATE _____